



**US Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to:	Issuance Date:
Public Notice No. 200400717	August 20, 2004
Stream:	Expiration Date:
Horsepen Creek	September 20, 2004
Address comments to:	US Army Corps of Engineers, Huntington District 602 Eighth Street ATTN: CELRHE Huntington, West Virginia 25701-2070

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

SECTION 10: The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act (CWA). This notice also serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Hampden Coal Company
Post Office Box 1389
Gilbert, West Virginia 25621

LOCATION: The project site is located on the south side of U. S. Route 52, approximately 2.2 miles east of its intersection with WV Route 44 near Hampden, Mingo County, West Virginia. Horsepen Creek, a perennial tributary of Gilbert Creek, flows through the project site. Gilbert Creek flows into the Guyandotte River, a Section 10 waterway. The location and limits of the project site are depicted on **Figure 1 titled "Location Map"**.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to discharge dredged and/or fill material into waters of the United States (U. S.), in conjunction with the construction and operation of the Pond Creek No. 3 Underground Mine. The proposed work is depicted on **Figure 2 titled "Site Plan"**. The purpose of the proposed project is to recover approximately 2,500,000 tons of bituminous coal from the Pond Creek coal seam. In order to construct the mine yard and stockpile area, the applicant proposes to discharge dredged and fill material into approximately 480 linear feet (0.22 acre) of a perennial reach of Horsepen Creek. Existing stream cross sections are depicted on **Figures 3-5 titled "Existing Stream Plan View and Cross Sections"**. The proposed work would involve the placement of two 120-inch culvert pipes and approximately 255 cubic yards of material. The filled area would be used for the transportation of personnel, equipment, coal, and supplies and would remain in place for approximately five years. Mined coal would be transported via overland conveyor to the applicant's existing Donaldson Branch Preparation Plant, located approximately 2,000 feet from the proposed Pond Creek No. 3 Mine. Two off-channel ponds designed to capture sediment are also proposed as part of this project. The West Virginia Department of Environmental Protection (WVDEP) is currently reviewing the Surface Mining Permit application for this project (U-5002-04) pursuant to the Surface Mining Control and Reclamation Act of 1977.

To establish baseline conditions and predict potential adverse aquatic resource effects of the proposed project, the applicant's consultant Compliance Monitoring Laboratories, Inc., conducted baseline water quality and benthic macro invertebrate studies at two sampling locations on Horsepen Creek located immediately upstream and downstream of the proposed project. Additional data was collected within a reference reach of Gilbert Creek. The sampling sites on Gilbert Creek were located upstream and downstream of an existing stream enclosure constructed by the applicant. Based on the evaluation of data collected during these studies, the applicant believes the proposed project would result in temporary increases in chemical water quality constituents, including conductivity, sulfate, and aluminum. However, these increases are not anticipated to exceed the limits required by freshwater organisms. In addition, it is expected the culvert installation would temporarily alter the aquatic community that currently exists at the point of disturbance and would result in a temporary increase in sedimentation. Based on the studies performed, the applicant further believes that the West Virginia Stream Index score would remain similar at locations above and below the proposed stream enclosure.

MITIGATION PLAN: To compensate for unavoidable adverse impacts to waters of the U. S., the applicant proposes, to remove fill material from the constructed mine yard, re-grade the area to approximate pre-mining conditions, and remove the stream enclosure to restore approximately 480 linear feet of Horsepen Creek. The stream would be restored to its approximate pre-mining geometry. The proposed stream restoration would employ natural channel design techniques and the 480-linear foot stream reach would be enhanced through the establishment of a 50-foot wide (25 feet on each side) riparian buffer that would be planted with a variety of native herbs, shrubs,

and trees. Additional habitat improvement features including root wads, cross vanes, and J-hooks would be installed as appropriate to improve overall stream functions. The applicant proposes to develop a restrictive covenant to ensure long-term protection of the riparian buffer and the 480-linear foot reach of Horsepen Creek proposed to be restored.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. This Public Notice will serve as coordination with the West Virginia Division of Culture and History regarding the project and its potential effects to known historical, architectural, or archeological sites listed in or eligible for inclusion in the NRHP.


ENDANGERED/THREATENED SPECIES REVIEW: The U.S. Fish and Wildlife Service's latest published version of endangered and threatened species has been reviewed to determine if any endangered or threatened species may occur in the project area. The proposed project would be located in a county in where the endangered Indiana bat (*Myotis sodalists*) is known to occur. This public notice serves as a request to the U.S. Fish and Wildlife Service to provide any additional information the agency may have on the extent to which the proposed project would affect any listed or proposed to be listed endangered or threatened species, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the District Engineer may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Ms. Jennifer Walker, Project Manager, South Regulatory Section, CELRH OR-FS; U. S. Army Corps of Engineers Huntington District; 502 Eighth Street; Huntington, West Virginia 25701-2070. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Ms. Jennifer Walker of the South Regulatory Section at 304-399-6956.


Ginger Mullins, Chief
Regulatory Branch

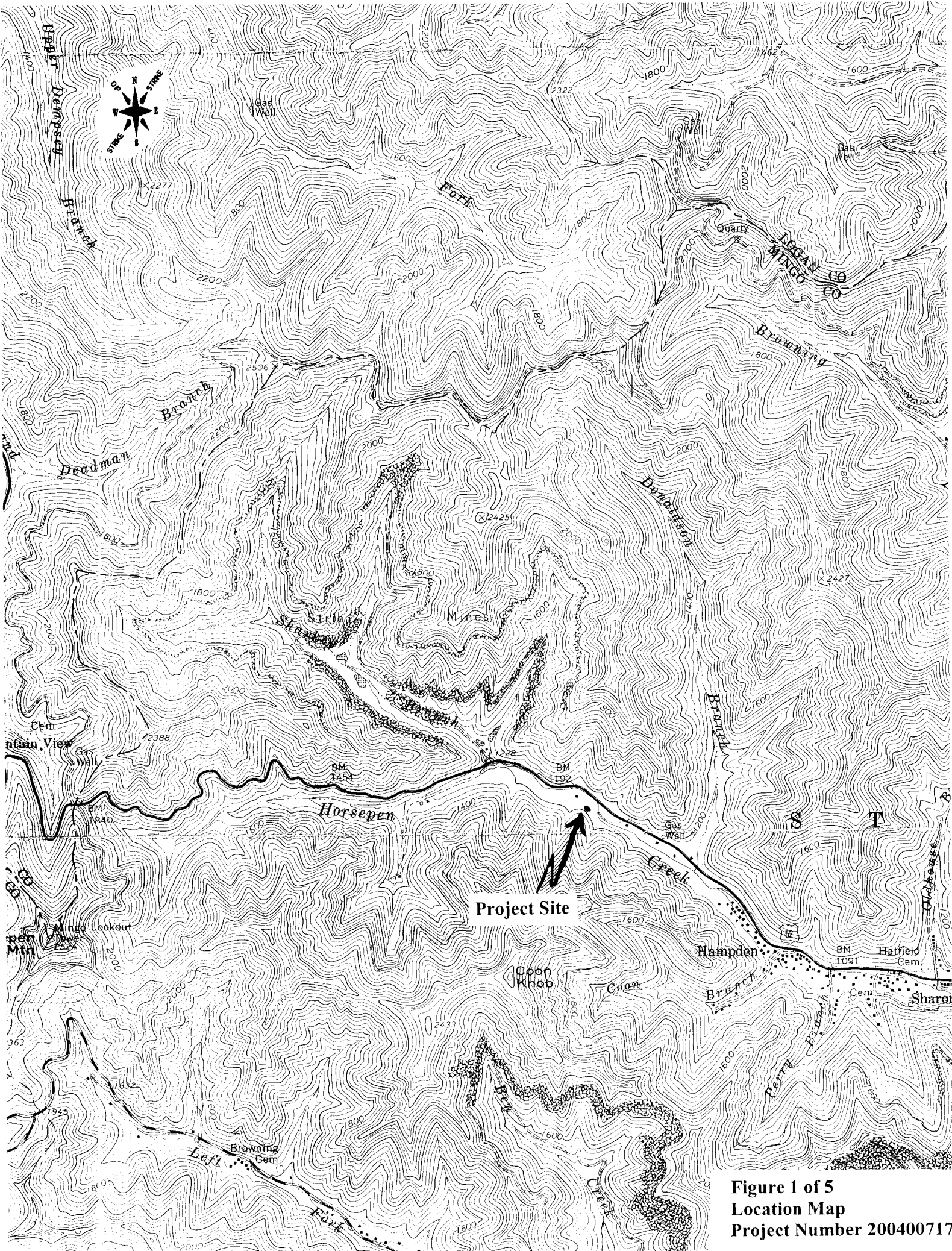


Figure 1 of 5
Location Map
Project Number 200400717

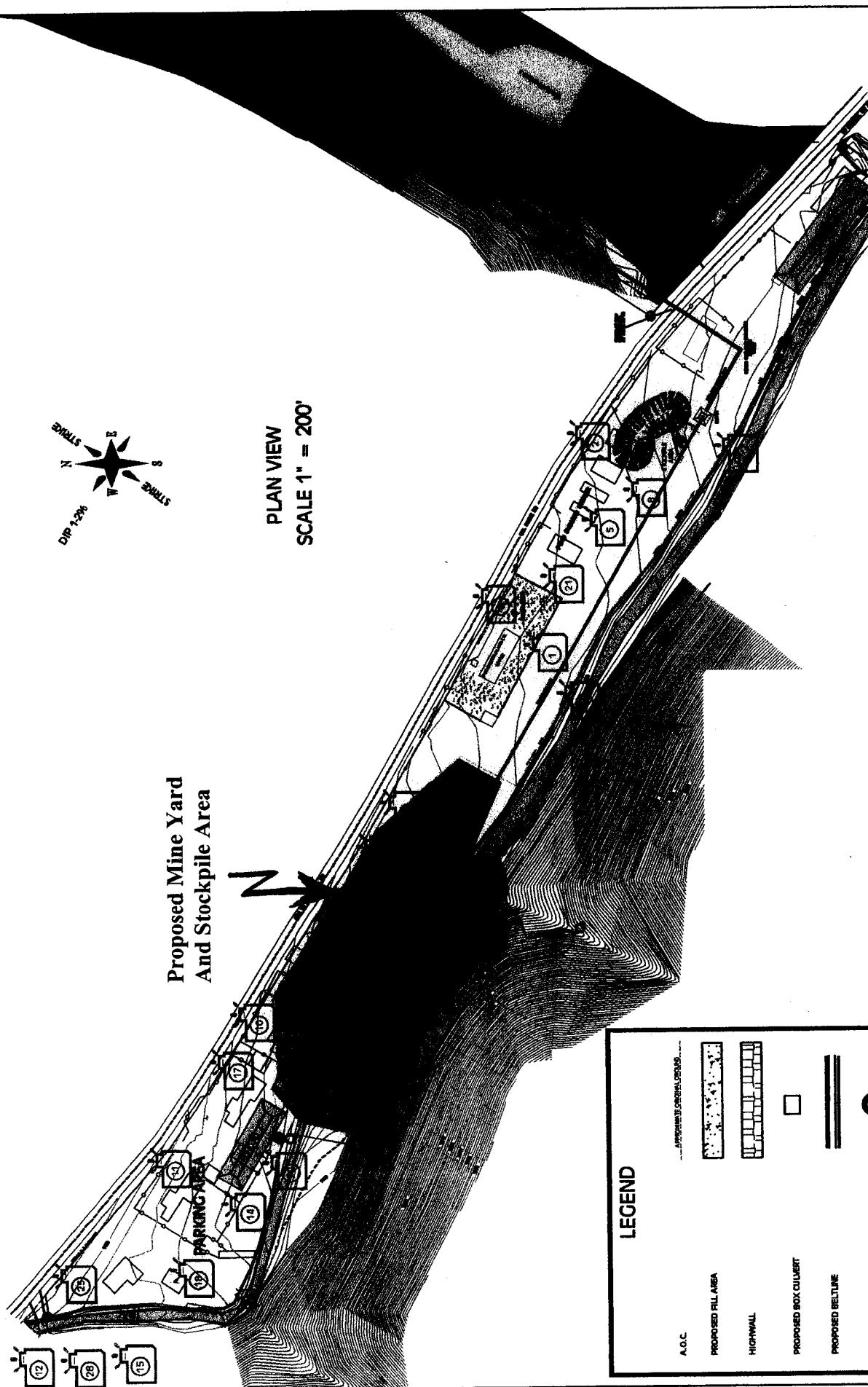


Figure 2 of 5
Existing Stream Plan View
Project Number 200400717

PROPOSED CREEK CHANNEL DISTURBANCE (APPROX 0+00 TO 7+00)

PLAN VIEW

SCALE 1" = 60'



CREEK CHANNEL NOT DISTURBED

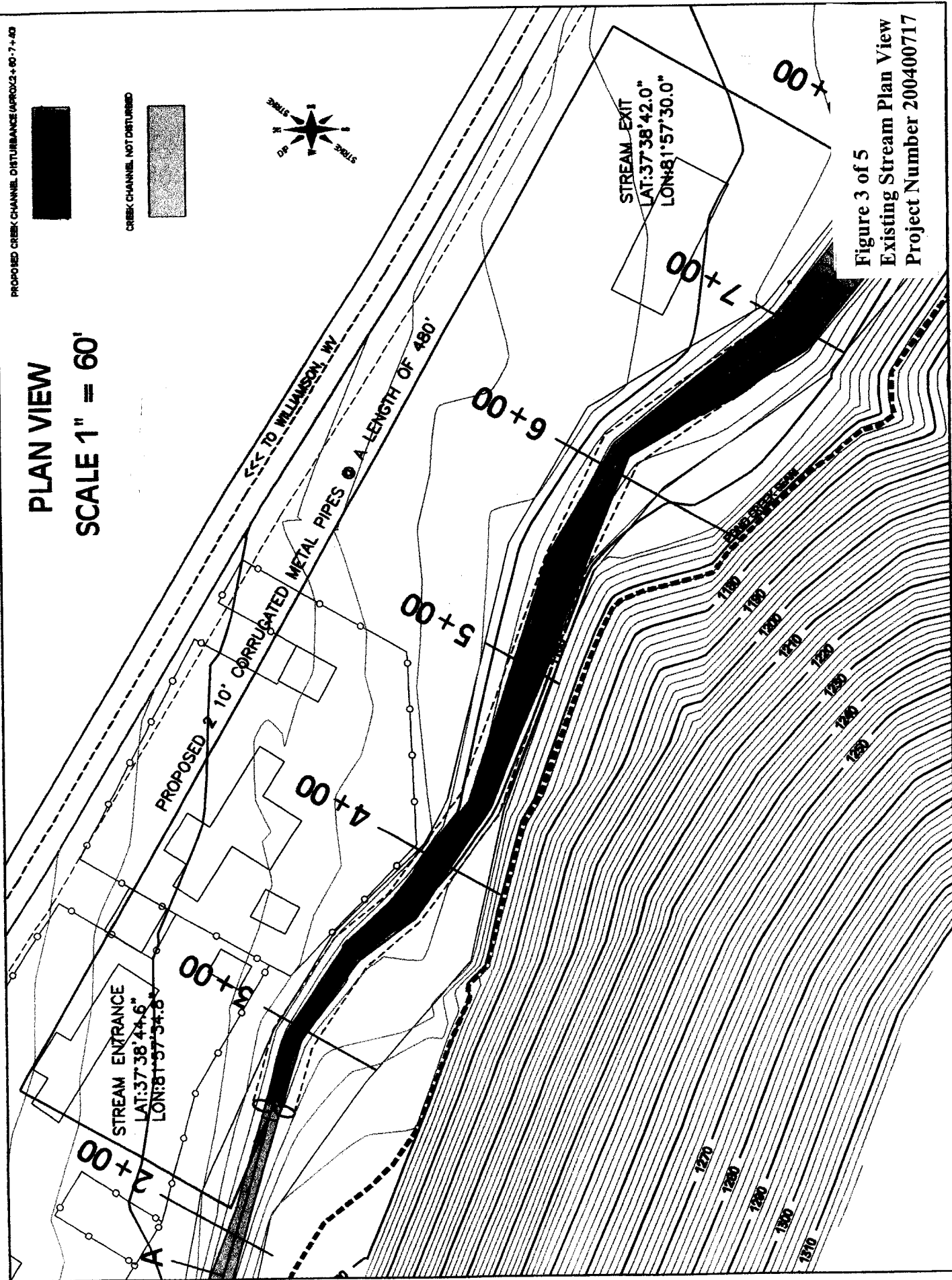
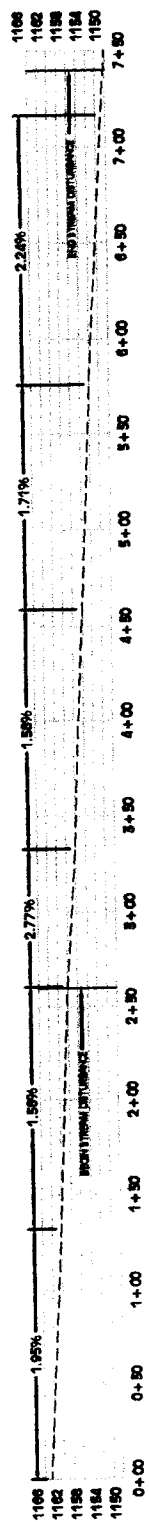
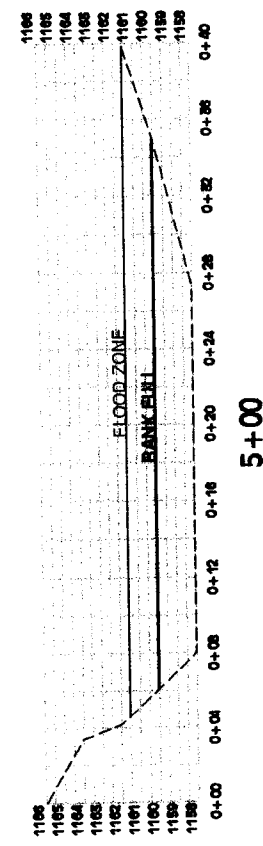
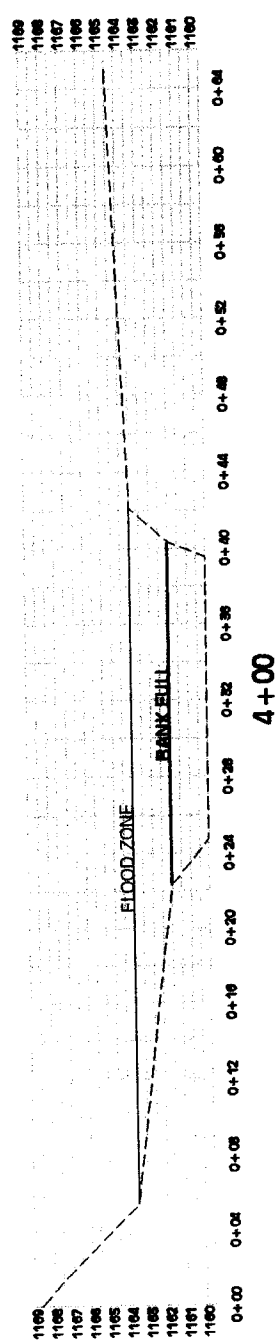
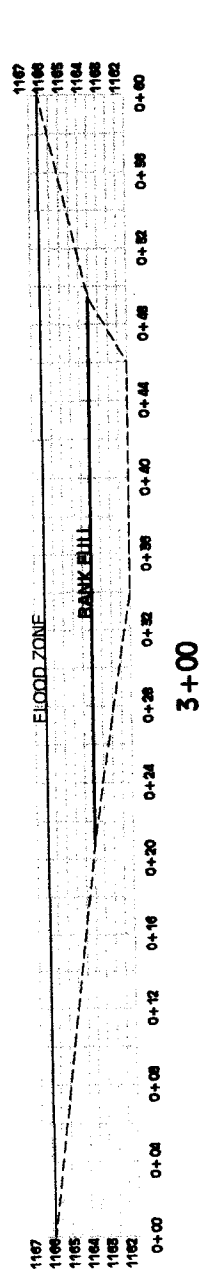


Figure 3 of 5
Existing Stream Plan View
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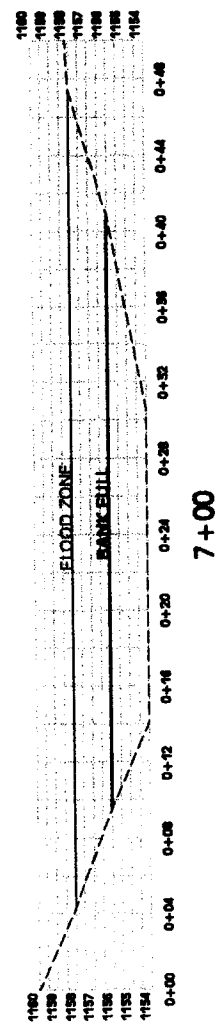
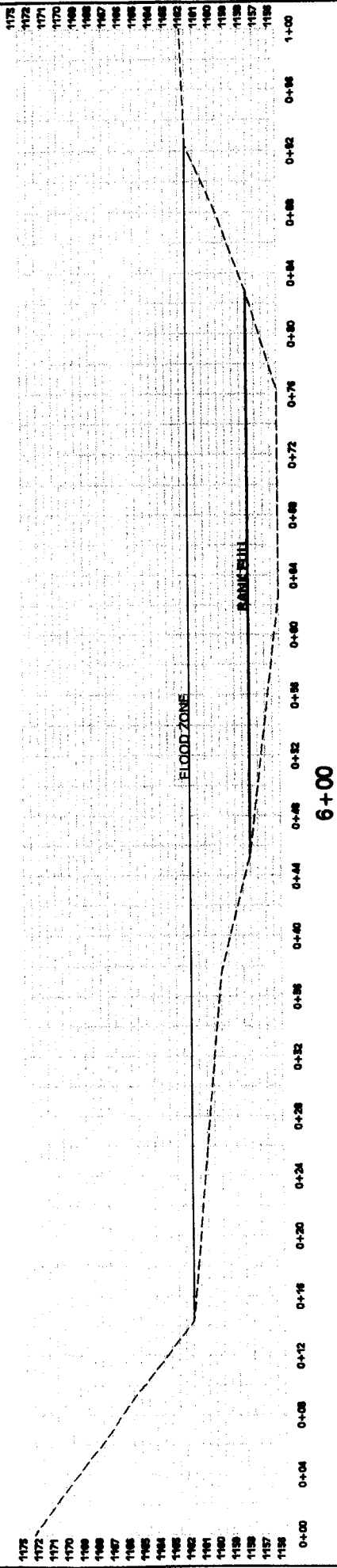


PROFILE A-A'
HORIZONTAL SCALE 1" = 100'
VERTICAL SCALE 1" = 40'



X-SECTIONS
SCALE 1" = 10'

Figure 4 of 5
Cross Section
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X-SECTIONS
SCALE 1" = 10'

Figure 5 of 5
Cross Section
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